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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/821,721	04/09/2004	Robert Edwin Schneider	45568-00457	1511
25231	7590	10/04/2005		
MARSH, FISCHMANN & BREYFOGLE LLP 3151 SOUTH VAUGHN WAY SUITE 411 AURORA, CO 80014			EXAMINER GILBERT, SAMUEL G	
			ART UNIT 3736	PAPER NUMBER

DATE MAILED: 10/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

FW

Office Action Summary	Application No.		Applicant(s)	
	10/821,721		SCHNEIDER ET AL.	
	Examiner		Art Unit	
	Samuel G. Gilbert		3736	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 22-33 is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☒ Claim(s) 21 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>5/16/2005</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Information Disclosure Statement

The information disclosure statement filed 5/16/2005 has been considered.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 – in lines 6 and 7, “a rotatable member to capture the rotatable member in a desired angular orientation” is unclear because it is unclear if there is more than one rotatable member being claimed and if any of these rotatable members are the same as the rotatable member set forth in the preamble.

Claim 2 – in line 2, it is unclear if the pair of diametrically opposed guides is the same guides as set forth in line 4 of claim 1.

Claim Objections

Claim 13 is objected to because of the following informalities: Claim 13 should end with a period. Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5, 7-10, and 12-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Metzler et al(5,702,342).

Claim 1 – element –24- is a retaining member, tongue –30- is a provides a guide which is movable along split –28-, the examiner is taking the position of element –24- against shoulder –26- as the locked position and any position other than that as the unlocked position, a resilient member –54- and a rotatable member –41-. The examiner is taking element –52- to be the rotatable member set forth in the preamble.

Claim 2 – tongues -30- and –42- are diametrically opposed around retention member –54-.

Claim 3 – when assembled retaining member –41- and resilient member –54- are interconnected as a single unit.

Claim 4 – the apparatus is receivable in a cavity in the mounting apparatus –12-.

Claim 5 – element –52- is a rotatable member (rotatable around the axis of the longitudinal axis of element –52- and also angularly rotatable with respect to a point inside the mounting apparatus). When locking ring –41- (rotatable member) is in the locked position, threaded into the mounting apparatus the frictional retention member will provide a limited amount of retention force/friction. It is the examiner's position that

there would inherently be a predetermined amount of force required to rotate post –52- when the apparatus is in a locked position.

Claim 7 – elements –64- provides a first interface.

Claim 8 – rotatable member –52- supports hearing aid transducer –62-.

Claim 9 – the examiner is taking the mounting post –52- as a portion of the housing of the transducer –62-.

Claim 10 – element –26- is a bas distal element –24-.

Claim 12 – element –12- is a mounting apparatus, the examiner is taking elements –41- and –54- as retention apparatus. Element –41- moves along the threaded path to compress resilient member –54-.

Claim 13 – element –41- is a retaining member, slots –64- provide a pair of guides and washer –40- provides a base distal the retaining member.

Claim 14 – it is the examiner's position that a tool such as a screwdriver would inherently be used to interface with retention member –41- and slots –64-

Claim 15 – the examiner is taking the un-numbered opening at the intersection of slots –64- as a first interface.

Claim 16 – the second interface is shown by lead line –40- in figure 1.

Claim 17 - rotatable member –52- supports hearing aid transducer –62-.

Claim 18 - the examiner is taking the mounting post –52- as a portion of the housing of the transducer –62-.

Claim 19 – it is the examiner's position that the device is capable of being preassembled prior to implantation.

Claim 20 – the examiner is taking tongues –30- and –42- as detents engageable with channel –28-.

Allowable Subject Matter

Claim 21 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 6 and 11 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Claims 22-33 are allowed.

The following is a statement of reasons for the indication of allowable subject matter:

Claims 22-33 – the prior art does not teach or fairly suggest a method as claimed for implanting a hearing aid transducer including using a spring loaded retention apparatus to capture a rotatable member in a desired angular orientation.

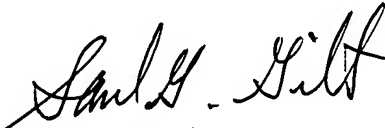
Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US Patents 4,809,694; 5,263,956; 4,498,461; 6,390,970; and 6,113,531 teach related locking structure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Samuel G. Gilbert whose telephone number is 571-272-4725. The examiner can normally be reached on Monday-Friday 6:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eleni Mantis-Mercader can be reached on 571-272-4740. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Samuel G. Gilbert
Primary Examiner
Art Unit 3736